

#### §614.4

#### 7 CFR Ch. VI (1–1–09 Edition)

(ix) Wildlife Habitat Incentives Program; and

(x) Conservation Innovation Grants.

(2) Non-Title XII conservation programs or provisions, including:

(i) Agriculture Management Assistance Program;

(ii) Emergency Watershed Protection Program;

(iii) Soil and Water Conservation Program;

(iv) Water Bank Program;

(v) Watershed Protection and Flood Prevention Program; and

(vi) Healthy Forest Reserve Program.

(3) Any other program to which this part is made applicable.

(b) With respect to matters identified in paragraph (a) of this section, participants may appeal adverse decisions concerning:

(1) Denial of participation in a program;

(2) Compliance with program requirements;

(3) Issuance of payments or other program benefits to a participant in a program;

(4) Technical determinations made under Title XII;

(5) Technical determinations or program decisions that affect a participant's eligibility for USDA program benefits;

(6) The failure of an official of NRCS to issue a technical determination or program decision subject to this part; and

(7) Incorrect application of general policies, statutory or regulatory requirements.

(c) Only a participant directly affected by a program decision or a technical determination made by NRCS may invoke the informal appeal procedures contained in this part.

(d) Appeals of adverse final technical determinations and program decisions subject to this part are also covered by the NAD rules of procedure, set forth at 7 CFR part 11, and by the FSA county committee appeals process, set forth at 7 CFR part 780, for informal appeals of Title XII decisions.

#### §614.4 Decisions not subject to appeal.

(a) Decisions that are not appealable under this part include:

(1) Any general program provision, program policy, or any statutory or regulatory requirement that is applicable to all similarly situated participants, such as:

(i) Program application ranking criteria;

(ii) Program application screening criteria

(iii) Published soil surveys; or

(iv) Conservation practice technical standards included in the local field office technical guide or the electronic FOTG (eFOTG).

(2) Mathematical or scientific formulas established under a statute or program regulation and a program decision or technical determination based solely on the application of those formulas;

(3) Decisions made pursuant to statutory provisions or implementing regulations that expressly make agency program decisions or technical determinations final;

(4) Decisions on equitable relief made by a State Conservationist or the Chief pursuant to Section 1613 of the Farm Security and Rural Investment Act of 2002, 7 U.S.C. 7996;

(5) Disapproval or denials of assistance due to lack of funding or lack of authority;

(6) Decisions that are based on technical information provided by another federal or State agency, *e.g.*, lists of endangered and threatened species; or

(7) Corrections by NRCS of errors in data entered on program contracts, easement documents, loan agreements, and other program documents.

(b) Complaints involving discrimination in program delivery are not appealable under this part and are handled under the existing USDA civil rights rules and regulations.

(c) Appeals related to contractual issues that are subject to the jurisdiction of the Agriculture Board of Contract Appeals are not appealable under the procedures within this part.

(d) Enforcement actions under conservation easement programs administered by NRCS.